Claims 1, 2 and 4 were rejected under 35 USC § 103(a) as being obvious over Ansmann et al. ("Ansmann"), U.S. Patent No. 5,863,461, in view of Klier et al. ("Klier"), U.S. Patent No. 5,597,792.

Claim 3 was rejected under 35 USC § 103(a) as being obvious over Ansmann in view of Klier and further in view of Diec et al. ("Diec"), WO 98/17238.

In response to *both* obviousness rejections, Applicants respectfully submit that a *prima facie* case of obviousness has not been made out. Therefore, Applicants respectfully request that the Examiner reconsider and withdraw both rejections.

In particular, Applicants do not believe that Ansmann and Klier are properly combined. While Ansmann relates to two-phase water-in-oil emulsions, the same is not true of Klier, which relates to single-phase oil continuous microemulsions. Given these fundamentally different systems, it is not readily apparent that a person having ordinary skill in the art would have looked to Klier for teachings how the emulsions of Ansmann might be favorably modified. Thus, although the Examiner indicates that Klier teaches a viscosity within the present range, no reason is given why, in view of the fundamental differences between Klier's formulations and Ansmann's, a person having ordinary skill in the art would have been motivated to formulate Ansmann's with the same viscosity. Applicants submit that no such motivation is revealed by the combination of Ansmann and Klier.

In the absence of an explanation from the Examiner why the teachings of Ansmann and Klier are sufficiently close that a person having ordinary skill in the art would have

considered the teachings of Klier pertinent to the disclosure of Ansmann, and, also, why Klier would have motivated a person having ordinary skill in the art to formulate Ansmann's emulsions at the viscosity range currently claimed, Applicants submit that a *prima facie* case of obviousness has not been made out. Therefore, Applicants respectfully request that the Examiner reconsider and withdraw this rejection.

Claims 1, 2 and 4 were rejected under 35 USC § 112, second paragraph, as being indefinite. In response, Applicants have revised the claims, and present the revised claims as new claims 5-13. For the Examiner's convenience, Applicants point out that the new claims correspond to the previous claims as follows:

New Claim	Previous Claim
5	1
6	1 (preferred definition of "a")
7	1 (particular definition of "a")
8, 9	2
10	3
11-13	4
14	New; supported by page 12

No new matter is believed to have been added by this amendment.

The Examiner required that Applicants amend the specification to refer in the first paragraph to the international application. This has been done.

Finally, Applicants call the attention of the Examiner to co-pending application Serial No. 09/719,365, in which the Examiner has made a "same invention-type" double patenting rejection over the instant case. Such rejection is in

error since the claims of the two applications are not co-extensive in scope. In the instant claims, the content of lipids, emulsifiers and lipophilic constituents is *"at least 15% by weight."* In the co-pending the application, it is *"at most 15% by weight."* Accordingly, the claims are not coextensive, and there is no "same invention-type" double patenting.

Applicants believe that the foregoing constitutes a bona fide response to all outstanding objections and rejections.

Applicants also believe that this application is in condition for immediate allowance. However, should any issue(s) of a minor nature remain, the Examiner is respectfully requested to telephone the undersigned at telephone number (212) 808-0700 so that the issue(s) might be promptly resolved.

Early and favorable action is earnestly solicited.

Respectfully submitted,
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CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that the foregoing Preliminary Amendment (7 pages total) are being facsimile transmitted to the United States Patent and Trademark Office on the date indicated below:

Date: 9-25-02 By [signature]